

Town of Amherst
Zoning Board of Appeals - Special Permit

DECISION

Applicant/owner: Hills House, LLC
38 Gray Street, Amherst, MA 01002

Date application filed with the Town Clerk: September 15, 2010

Nature of request: To modify Special Permit, ZBA FY2008-00007, to remove conditions 2 & 3 and modify the approved flag lot configuration, under Section 6.3 and 10.33 of the Zoning Bylaw

Address: 38 Gray Street (Map 14B, Parcel 18, R-G District)

Legal notice: Published on September 22, 2010 and September 29, 2010 in the Daily Hampshire Gazette and sent to abutters on September 29, 2010

Board members: Tom Simpson, Barbara Ford, Tom Ehrgood

Submissions:

- ZBA application, filed September 15, 2010;
- ZBA FY2008-00007 (with approved plan);
- ANR plan prepared by Harold Eaton Associates, dated February 15, 2010.

Site Visit: October 5, 2010

The Board members and Town Staff met the applicant, Jerry Guidera, on site. The Board members observed the following:

- The location of the property on the west side of Gray Street with an existing, partially constructed driveway situated north of 32 Gray Street, the existing natural vegetation along the north boundary of the flag lot access strip, and the existing row of evergreen shrubs planted on the southerly border of the access strip.
- The location of the large, single family residence atop a modest incline up from Gray Street.
- The location of the easterly property line and the approximate location of the area of land being conveyed to the property of 14 Gray Street.

Public Hearing: October 7, 2010

Mr. Ehrgood disclosed that he is an acquaintance of the applicant and is actively following the work in the Local Historic District Committee, of which Mr. Guidera is chairperson. Additionally, he stated that he is an acquaintance with an abutter, Ed Wilber. He stated that these relationships will not affect his ability to hear this case objectively.

Mr. Guidera presented the application. He stated the following:

- He is one of the principals of Hills House LLC and is seeking to modify the existing Special Permit, ZBA FY2008-00007, which was issued to the previous owner, Barry Roberts.
- The impetus for the request to modify the permit is related to the conveyance of approximately 2,500 square feet from the flag lot parcel to the property at 14 Gray Street.
- The Permit had several conditions placed on it. The owners are requesting removal of the following conditions related to the construction of the driveway:
 - Condition # 2 – *The new driveway to serve the flag lot shall be located as close to the south edge of the access strip as possible.*
 - Condition # 3 – *Care shall be taken, when constructing the driveway, to preserve the existing natural screening on the north edge of the access strip.*

Mr. Simpson confirmed the following with the applicant:

- The building on the flag lot parcel is currently a single family dwelling;
- The area required for a flag lot in the R-G Zoning District is 24,000 square feet and the revised plan shows the property consisting of 52,000 square feet;
- The frontage for the flag lot along Gray Street has not changed;
- The flag lot is still capable of containing a 100 foot building circle.

Mr. Guidera stated the following regarding the driveway:

- The conditions of the existing Special Permit were put into place before there were any other houses on Gray Street to the south of the subject property. The conditions came mostly at the request of the northerly property owner, Ed Wilber, 48 Gray Street, so as to keep the driveway as far from his property line as possible.
- Condition # 2 as written would be unfair to the southerly property owners, Eric & Jessica Wilkinson, 14 Gray Street, because the driveway would be immediately adjacent to their property.
- It makes more sense for the driveway to be located straight down the middle of the access strip, so that it will be fair to both property owners.
- The owners intended to provide sufficient screening to provide privacy to both adjacent properties and for the screening to fit in with the overall project consisting of the three house lots to the south along Gray Street.

Ms. Ford asked about removing Condition # 3 and whether there are plans for the driveway or landscaping in that area. Mr. Guidera stated that they intend to install more vegetation to provide better screening of the driveway from the adjacent property to the north.

Ms. Ford expressed concern that removing Condition # 3 could allow for some of the mature trees to be removed before a landscape plan is prepared and submitted to the Board.

Mr. Ehrgood stated that the way Condition # 3 is written such that the landscaping plan is required prior to the construction of the driveway.

Bret McDowell, 32 Gray Street, stated the following:

- He purchased the property in 2009. At that time, the temporary driveway and evergreen screening were already in place.

- He is in favor of removing Condition # 2 in order to allow the driveway to be positioned in the center of the access strip and, therefore, further from his property line.

Ms. Ford MOVED to close the evidentiary portion of the public hearing. Mr. Simpson seconded the motion and the Board VOTED unanimously to close the public hearing.

Public Meeting:

The Board determined that condition # 3 may be reworded to more clearly identify the purpose of Condition # 3. The vegetation along the flag lot access strip should not be removed prior to the review and approval of a landscape plan by the Zoning Board of Appeals. The Board acknowledged that some of the existing/mature vegetation along the north property line may need to be removed to provide better screening.

The Board determined that the findings of the previous permit remain appropriate and incorporated the findings by reference.

Specific Findings:

Under Section 6.3 of the Zoning Bylaw of the Zoning Bylaw, Flag Lots, the Board found that:

6.32 – The flag lot, exclusive of access strip, is at least double the minimum lot area normally required for the R-G district, because the minimum lot area required is 12,000 square feet; twice the minimum is 24,000 square feet, and the flag lot is over 55,000 square feet.

6.33 – The flag lot access strip has a minimum street frontage of forty (40) feet and a minimum width of forty (40) feet for its entire length. There is no change in direction greater than 45 degrees.

6.34 – The width of the flag lot nearest Gray Street is over 100 feet; the minimum street frontage required in the R-G district is 100 feet.

6.35 – The portion of the flag lot where the building is located can contain a building circle of at least 100 feet.

6.36 and 6.38 – There are no more than three flag lots adjacent to each other at the street line and there will be no more than three (3) flag lots created from this parcel because there is only one flag lot being created.

6.37 – The access to the lot will meet the requirements of Section 7.7 because a final site plan for the driveway will be submitted to the Board for review and approval.

The Board found under Section 10.38 of the Zoning Bylaw, Specific Findings required of all Special Permits, that:

10.380 – The proposal is suitably located in the neighborhood in which it is proposed because the neighborhood is zoned General Residence which requires a minimum lot size of 12,000 square feet and a minimum of 100 feet of frontage. The lot currently contains a building. The lot is larger and contains less coverage than most lots in the neighborhood.

10.381 – The proposal is compatible with existing uses and other uses permitted by right because the proposal is for residential use in a residential neighborhood and therefore is compatible with the existing uses.

10.382 – The proposal would not constitute a nuisance due to air and water pollution, flood, noise, odor, dust, vibration, lights, or visually offensive structures or site features because the proposal is for a lot more than two times the required size and there is no change in the use; therefore, it will not constitute a nuisance.

10.383 – The proposal would not be a substantial inconvenience or hazard to abutters, vehicles or pedestrians because the lot and placement of the driveway does not create any inconvenience or hazard.

10.384 – Adequate and appropriate facilities would be provided for the proper operation of the proposed use because the lot is serviced by Town water and Town sewer.

10.385 – The proposal reasonably protects the adjoining premises against detrimental or offensive uses on the site, including air and water pollution, flood, noise, odor, dust, vibration, lights or visually offensive structures or site features because the lot is large and the building is already constructed on the lot. Therefore, allowing this proposal would not constitute a change with respect to protection of adjoining premises.

10.387 – The proposal provides convenient and safe vehicular and pedestrian movement within the site, and in relation to adjacent streets, property or improvements because the new driveway to the building will provide adequate, convenient and safe vehicle and pedestrian movement. The new driveway will be reviewed and approved by the Zoning Board of Appeals.

10.391 – The proposal protects, to the extent feasible, unique or important natural, historic or scenic features because the proposal provides a large lot for the existing structure and allows the placement of the Chapin-Ward House as far north as possible on an adjacent lot, protecting the unique historic features of the Henry Hills House.

10.392 – The proposal provides adequate landscaping because, other than the driveway, there will be no change in the landscaping in the buffers of the site.

10.394 – The proposal avoids, to the extent feasible, impact on steep slopes, floodplains, scenic views, grade changes and wetlands because the proposal does not change grading or slopes other than the driveway.

10.398 – The proposal is in harmony with the general purpose and intent of the Bylaw because it promotes the health, safety, convenience and general welfare of the inhabitants of the Town of Amherst.

Public Meeting – Zoning Board Decision

Mr. Simpson moved to APPROVE the application with conditions. Mr. Ehrgood seconded the motion.

For all of the reasons stated above, the Board VOTED unanimously to grant a Special Permit, ZBA FY2011-00008, to modify ZBA FY2008-00007 to remove Condition # 2 and modify the approved flag lot configuration, under Section 6.3 and 10.33 of the Zoning Bylaw (Map 14B, Parcel 18, R-G Zone), with conditions.

TOM SIMPSON

BARBARA FORD

TOM EHRCOOD

FILED THIS _____ day of _____, 2010 at _____,
in the office of the Amherst Town Clerk _____.
TWENTY-DAY APPEAL period expires, _____ 2010.
NOTICE OF DECISION mailed this _____ day of _____, 2010
to the attached list of addresses by _____, for the Board.
NOTICE OF PERMIT or Variance filed this _____ day of _____, 2010,
in the Hampshire County Registry of Deeds.

**Town of Amherst
Zoning Board of Appeals**

SPECIAL PERMIT

The Amherst Zoning Board of Appeals hereby grants a Special Permit, ZBA FY2011-00008, to modify ZBA FY2008-00007 to remove Condition # 2 and modify the approved flag lot configuration, under Section 6.3 and 10.33 of the Zoning Bylaw (Map 14B, Parcel 18, R-G Zone), with the following conditions:

1. The house number for the flag lot shall be clearly displayed in accordance with Town of Amherst Fire Department recommendations.
2. Prior to any changes to the existing vegetation along the north property line of the access strip, a final site plan for the driveway, including location, materials, grading and drainage, turnaround area, landscaping and screening, shall be submitted to the Zoning Board of Appeals for review and approval at a public meeting.
3. The final site plan for the driveway shall be submitted to the Fire Department for its review and comment prior to submitting the plan to the Zoning Board of Appeals for approval.
4. All exterior lighting shall be downcast.

TOM SIMPSON, Chair
Amherst Zoning Board of Appeals

DATE